

In applicants' Response, Group I, claims 1-2, drawn to nucleic acids, and the molecules of Group E in claim 2 ("RD9: *cobL*, Rv2073c, Rv2074, Rv2075c"), were elected for prosecution, with traverse. Applicants' traversal of the restriction and election requirements relied **in part** on their contention that the Examiner is impermissibly relying on Brosch. Applicants stated that Brosch is not prior art to the instant application. Applicants are filing this paper to clarify this statement.

Brosch was published in May 1998. The instant application claims priority to FR 99/03,250, filed March 16, 1999, and has an international filing date of March 16, 2000. (See Applicants' Transmittal Letter Concerning a Filing Under 35 U.S.C. § 371.) Applicants note that Brosch is the work of the inventors, and thus can not be prior art against the instant application under 35 U.S.C. § 102(a). See *In re Katz*, 687 F.2d 450, 454, 215 U.S.P.Q. 14, 17 (C.C.P.A. 1982). However, Brosch is a printed publication that was publicly available more than one year before the international filing date of the instant application. Brosch may therefore be prior art to the instant application under 35 U.S.C. § 102(b). See 35 U.S.C. § 119(a).

In filing this paper applicants are in no way admitting that Brosch discloses any aspects of the claimed invention, or that Brosch in any way suggests any aspects of the claimed invention. Applicants reserve the right to prove that the pending claims are novel and non-obvious over Brosch if Brosch is cited against the pending claims.

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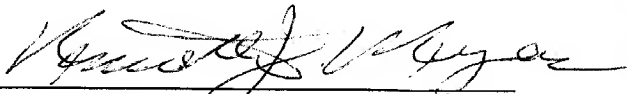
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Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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By: 

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